

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIC M. BIRNEL,

Plaintiff,

v.

CAROL PORTER,

Defendant.

Case No. C06-5303 RJB/KLS

REPORT AND
RECOMMENDATION

NOTED:
August 18, 2006

This civil rights action been referred to United States Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. §§ 636(b)(1) and Local MJR 3 and 4. The court is advised by plaintiff that he no longer wishes to pursue this action.

DISCUSSION

Rule 41(a)(1) of the Federal Rules of Civil Procedure provides, in pertinent part:


[A]n action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs

CONCLUSION

The court should dismiss this action as plaintiff has voluntarily requested dismissal. No answer or motion for summary judgment has been filed by the defendant. A proposed order accompanies this Report and Recommendation.

1 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,
2 the parties shall have ten (10) days from service of this Report and Recommendation to file written
3 objections. *See also* Fed. R.Civ.P. 6. Failure to file objections will result in a waiver of those
4 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time
5 limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **August 18,**
6 **2006**, as noted in the caption.

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8 DATED this 21st day of July, 2006.

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11 Karen L. Strombom
12 United States Magistrate Judge
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